

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NIRMALA RAMNARAIN,
*Personal Representatives of the Estate of
Rianna Ramnarain,*

Plaintiff,

v.

JASON GROSSMAN, M.D.,
GORDON HUGGINS, M.D.,
CHARMAINE DESIR, N.P.,
ALLISON FOLEY,¹ N.P.,

Defendants.

RE: Docket No. 1984CV03979G
Superior Court Department of the Trial Court,
Suffolk Division

20-CV-10654

NOTICE OF REMOVAL

**TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS**

PLEASE TAKE NOTICE that, pursuant to 42 U.S.C. § 233(c), Defendants Charmaine Desir, N.P., and Allison Foley, N.P., by and through their attorney, Andrew E. Lelling, United States Attorney for the District of Massachusetts, hereby remove to this Court the above-entitled action based on the following:

¹ The name of Defendant Allison Foley is misspelled in the Complaint.

BACKGROUND

1. On or about December 24, 2019, Plaintiff filed a Complaint in the Superior Court Department of the Trial Court, Suffolk Division, Commonwealth of Massachusetts, Docket No. 1984CV03979G. A true and correct copy of the Complaint in the State Court Action is attached as Exhibit A.

2. In the State Court Action, Plaintiff named Charmaine Desir and Allison Foley as Defendants. However, the basis for the Complaint, as set forth in the Complaint, is an action alleged to have been taken by the defendant in their capacity as deemed employees of the United States Government, acting within the scope their employment. The United States has not been properly served with the Complaint.

3. Plaintiff also named Dr. Jason Grossman and Dr. Gordon Huggins as defendants in the State Court Action.

4. Defendants Desir and Foley were at all relevant times employed by Harbor Health Services, Inc., located in Boston, Massachusetts and acting within the scope of such employment.

5. Harbor Health Services, Inc. is a program grantee under 42 U.S.C. § 254B and Defendants Desir and Foley were deemed to be employees of the Public Health Service (“PHS”) under the Federally Supported Health Centers Assistance Act (the “FSHCAA”), 42 U.S.C. § 233(g)-(n), and thus covered by the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80, at the time of the incidents giving rise to this suit.

6. Under 42 U.S.C. § 233(a), as amended by the FSHCAA, the remedy against the United States provided by the FTCA is the exclusive remedy for medical malpractice claims brought against PHS employees for conduct committed while acting within the scope of their employment.

JURISDICTION AND TIMELINESS OF REMOVAL

7. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 233(c), which provides that the United States may remove a tort action commenced in State court against a PHS employee at any time before trial when a defendant was acting with the scope of her employment for an entity deemed to be part of the PHS, as in this case.

VENUE

8. Venue lies in this Court pursuant to 42 U.S.C. § 233(c).

9. Written notice of the filing of this Notice of Removal will be filed with the Clerk of the Suffolk County Trial Court Department, Commonwealth of Massachusetts. A copy of the notice will be sent to counsel for the Plaintiff and counsel for the non-federal defendants on whose behalf an appearance has been entered.

10. Pursuant to Local Rule 81.1(a), the United States will request from the Clerk of the Suffolk County Trial Court certified copies of all records and proceedings in the State Court Action and certified copies of all docket entries, including a copy of this Notice of Removal, and will file the same with this Court within twenty-eight (28) days after filing of this Notice of Removal.

WHEREFORE, Defendants Desir and Foley hereby remove the State Court Action currently pending in the Suffolk County Trial Court to this Honorable Court.

Respectfully submitted,

ANDREW E. LELLING
United States Attorney

By: /s/ Erin E. Brizius

Dated: April 2, 2020

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LOCAL RULE 7.1 CERTIFICATION

I hereby certify that, pursuant to Local Rule 7.1, I conferred with Plaintiff's counsel and counsel for non-federal defendants on the issues raised in this Notice.

/s/ Erin E. Brizius

Dated: April 2, 2020

Erin E. Brizius
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants via email or First Class Mail.

Attorney for Plaintiff:

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Date: April 2, 2020

/s/ *Erin E. Brizius*
Erin E. Brizius
Assistant United States Attorney